United Nations E/CN.18/2005/9

Economic and Social Council

Distr.: General
24 March 2005

Original: English

United Nations Forum on Forests
Fifth session
New York, 16-27 May 2005
Item 6 of the provisional agenda*
On the basis of the assessment referred to in paragraph 2 (e) of Economic and Social Council resolution 2000/35, consideration of the parameters of a mandate for developing a legal framework on all types of forests, with a view to recommending them to the Council and through it to the General Assembly

Consideration of the parameters of a mandate for developing a legal framework on all types of forests, with a view to recommending them to the Economic and Social Council and through it to the General Assembly

Note by the Secretary-General**

Summary

The Economic and Social Council, in its resolution 2000/35, decided that the United Nations Forum on Forests would, within five years, on the basis of an assessment, consider, with a view to recommending to the Economic and Social Council and through it to the General Assembly, the parameters of a mandate for developing a legal framework on all types of forests.

The objective of the present note is to facilitate deliberations and provide some background on this matter. The note does not imply any recommendation either about adopting a mandate or developing a legal framework, since such decisions are the prerogative of the member States.

* E/CN.18/2005/1.
** The delay in issuing the present note was due to extended consultations.

05-28451 (E) 140405

Contents

		Paragraphs	*Page*
I.	Introduction	1–8	3
II.	International legal framework	9–12	4
III.	Terms of a mandate for developing a legal framework on all types of forests	13–19	5
IV.	Concluding remarks	20	6
Annex			
	Possible elements of a mandate for developing a legal framework on all types of forests		8

I. Introduction

1. The Economic and Social Council, in its resolution 2000/35, established the international arrangement on forests with the United Nations Forum on Forests as a subsidiary body. In the same resolution (paragraph 3 (c) (i)), the Council decided that the Forum, inter alia, would within five years, on the basis of an assessment,[1] consider, with a view to recommending to the Economic and Social Council and through it to the General Assembly, the parameters of a mandate for developing a legal framework on all types of forests. The process could develop the financial provisions to implement any future agreed legal framework and could also consider recommendations made by expert groups on the establishment of mechanisms on finance, technology transfer and trade.

2. In the multi-year programme of work of the Forum on Forests for 2001-2005,[2] the above matter was scheduled for discussion at the fifth session of the Forum. It may be noted that two other agenda items of the fifth session are closely related to agenda item 6 and may be considered concurrently. The two items are agenda item 5, Review of the effectiveness of the international arrangement on forests as referred to in paragraph 17 of Economic and Social Council resolution 2000/35, (E/CN.18/2005/6), which also addresses the institutional framework of the Forum, including its position in the United Nations system, and agenda item 4, Review of progress and consideration of future actions (E/CN.18/2005/8).

3. On the recommendation of the Forum on Forests, the Economic and Social Council established the Ad Hoc Expert Group on Consideration with a View to Recommending the Parameters of a Mandate for Developing a Legal Framework on All Types of Forests. During the deliberations on the establishment of the ad hoc expert group at the third and fourth sessions of the Forum, the member States framed the scope of the work of the group in order for it to focus on the future modalities of the international arrangement on forests. The Ad Hoc Expert Group met in September 2004 in New York.

4. The background document containing the compilation of country views prepared for the meeting of the Ad Hoc Expert Group and the report of the Ad Hoc Expert Group itself (E/CN.18/2005/2), contained detailed information and analysis of a range of legally binding and non-binding options. The report of the country-led initiative in support of the Forum on the future of the international arrangement on forests, held in January 2005 in Guadalajara, Mexico, "the Guadalajara report", analysed and explored different modalities for the future of the international arrangement on forests. These sources of information and their analyses were very useful in providing some parameters for the consideration by the Forum. The report of the ad hoc expert group and the Guadalajara report are presented separately to the Forum for its consideration at the fifth session.

5. In the report of the Secretary-General to the Forum on agenda item 4, "Review of progress and consideration of future actions" (E/CN.18/2005/8) it is suggested that the options discussed by those two meetings could be combined and reduced to two principal options: (a) strengthening the international arrangement on forests; and (b) developing a legal framework.

6. The objective of the present note is to facilitate deliberations on agenda item 6 by presenting background information on relevant international legal frameworks and specific issues relating to forests and suggesting possible terms of a mandate.

7. The reference to a "legal framework" in resolution 2000/35 implies that it would contain some legally binding elements. It would be for the negotiating parties to determine which aspects of the framework would take the form of legally binding rules and which elements might be contained in accompanying non-binding instruments. A mandate might indicate that the regime should have a minimal binding element and leave open the question as to what other elements would be adopted as binding rules or it might handle the matter in more detail. In either case the parties would work within the terms of the mandate to determine the extent to which the regime was legally binding.

8. The present note does not imply any recommendation either about adopting a mandate or developing a legal framework since such decisions are the prerogative of the member States.

II. International legal framework

9. An international legal framework on all types of forests, if agreed upon by States, would become a part of the body of rules that constitutes international law. International law provides legally binding rules for States in their interactions with each other, thus establishing norms and standards for the collective benefit of the international community, enhancing international cooperation and collaboration on resolving environmental and human problems and promoting peace and security.

10. Generally, such a legal framework would be expected to perform three basic functions under international law: legislative, administrative and adjudicative. The legislative function provides for the creation of legal principles and rules, which impose binding obligations that require States and other members of the international community to conform to certain norms of behaviour. The administrative function allocates tasks to various actors to ensure that the standards imposed by the principles and rules of international law are applied. The adjudicative function provides mechanisms for resolving disputes that have arisen or may arise between States in the context of the rights and obligations contained in the legal framework.

11. Specific international instruments (or agreements) usually contain an articulation of general principles followed by a more detailed programme of action to address specific problems under the purview of the instruments. Thus, a legal framework on all types of forests would need to establish a global vision, commitments and strategies to address challenges of unsustainable practices and call for specific action to be taken at the national level, such as the adoption of national regulatory standards and implementation strategies. Other common provisions invariably contained in such instruments include: duties of international cooperation, monitoring and reporting; research; exchange of information; appropriate dispute resolution processes; coordination among related agreements; and the establishment of institutional arrangements for the operation of the agreement, including the creation of an independent secretariat and rules governing meetings of the parties.

12. There is little doubt that an international legal framework on all types of forests would have to identify viable and flexible solutions to a number of complicated issues associated with international law in general and the specific characteristics of forests in particular. Developing and effectively implementing an

international legal framework on all types of forests would need to meet the challenge of reconciling the principle of territorial sovereignty with the cross-border nature of many forest-related problems. In this regard, a number of reports and background documents prepared for the Intergovernmental Panel on Forests/Intergovernmental Forum on Forests (IPF/IFF) process and for the above-mentioned meeting of the Ad Hoc Expert Group in September 2004 provide comprehensive details. The report of the Secretary-General to the fourth session of the Intergovernmental Forum on Forests (E/CN.17/IFF/2000/4) succinctly identified the following overarching principles from the Rio Declaration on Environment and Development and the "Forest Principles",[3] to guide international forest policy deliberations to balance the territorial sovereignty issue and cross-border nature of most environmental problems:

(a) States have the sovereign right to utilize their resources to meet their national policy objectives;

(b) States have the right to economic development in accordance with their social, economic, environmental and political conditions;

(c) States have common but differentiated responsibilities regarding collective global interests and concerns related to forests;

(d) States have the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

(e) International cooperation should focus on building human and institutional capacity in developing countries to manage their forests sustainably.

III. Terms of a mandate for developing a legal framework on all types of forests

13. As stated above, a legal framework could include a set of legally binding commitments to be applied in conjunction with certain non-binding elements. The negotiating parties will have to determine which aspects of the framework would take the form of legally binding rules, for example in the form of a treaty or convention, and which elements might be contained in accompanying non-binding instruments.

14. It is possible to envisage a regime that combines a minimal set of binding legal elements, perhaps concerning overall objectives and principles and procedural matters such as reporting and information exchange, with a set of non-binding provisions on issues such as criteria and indicators, guidelines and code of conduct for sustainable forest management. On the other hand, it is also possible to imagine a regime with more extensive binding legal elements that address not only general principles but also specific requirements for action at the national level, such as drawing up national forest programmes and setting targets in relation to sustainable forest management, as well as action at the international level, including, for example, provision for technology transfer.

15. In the event that the Forum decides to proceed with the development of a legal framework on all types of forests, it may wish to consider, by way of an example,

the characteristics of a mandate to develop a legal framework on all types of forests as set out below.

16. As a starting point, a mandate needs to provide some clarification of the underlying rationale and purpose of the envisaged legal framework and point out the essential subject matter to be addressed. Accordingly, in the light of the basis upon which the United Nations Forum on Forests was established, it might be envisaged that the mandate would call upon the parties to address the management, conservation and sustainable development of all types of forests. The mandate might then set out some general guiding principles to assist the parties in their negotiations, for example by calling on them to ensure that the framework respects the sovereign rights of nation States, consistent with the requirements of international law, and promotes democratic values and human rights. It could also be specified that the framework would build upon the "Forest Principles", the provisions of chapter 11 of Agenda 21,[4] the IPF/IFF proposals for action and the work of the Forum and other relevant international, regional and national instruments or initiatives.

17. Further substantive matters might include the key issues that such a legal framework would address. Parties might consider it desirable to have a more or less detailed list of items, which could include, for example, a consideration of illegal harvesting and associated cross-border trade of forest products, the role of national forest programmes and criteria and indicators relating to sustainable forest management. The mandate might also address specific issues such as capacity-building, financial mechanisms, public participation and information exchange.

18. A mandate for developing a legal framework for all types of forests would also need to contain some procedural parameters relating, inter alia, to: the initiation of the negotiating process and participation of member States and other entities; organizational issues, such as the holding of negotiating sessions, the adoption of rules of procedure, funding, the setting up of a bureau, a secretariat and any necessary subsidiary bodies; and the reporting of the status of negotiations.

19. The terms of a mandate can be further defined by developing the principal elements that could be drawn from the existing General Assembly and Economic and Social Council resolutions and similar intergovernmental processes establishing intergovernmental negotiating processes (see the annex to the present note for possible elements of a mandate).

IV. Concluding remarks

20. The intention of the present note is to be of assistance to the United Nations Forum on Forests in addressing the matter addressed in Economic and Social Council resolution 2000/35, paragraph 3 (c) (i). The note does not imply any recommendation either on adopting a mandate or developing a legal framework on all types of forests, since such decisions are the prerogative of the member States.

Notes

[1] The assessment, as set out in paragraph 2 (c) of resolution 2000/35, was to: "Monitor and assess progress at the national, regional and global levels through reporting by Governments, as well as by regional and international organizations, institutions and instruments, and on this basis consider future actions needed".

[2] *Official Records of the Economic and Social Council, 2001, Supplement No. 22* (E/2001/42/Rev.1), part two, chap. I.B, resolution 1/1.

[3] The official title of the "Forest Principles" is Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. Both the Rio Declaration and the "Forest Principles" were negotiated at the United Nations Conference on Environment and Development in 1992.

[4] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II.

Annex

Possible elements of a mandate for developing a legal framework on all types of forests

1. Negotiation process

(a) Establishment of an intergovernmental negotiating process;

(b) Date and venue of an organizational session primarily to elect officials of the negotiation process and adopt rules of procedure;

(c) Dates and venues of the first and subsequent sessions of the negotiation process;

(d) Duration of each session;

(e) National and regional preparatory process: involving Governments, organizations and stakeholders;

(f) Clarify link between the negotiation process and other bodies.

2. Participation in negotiation process

(a) Membership to the negotiation process open to all States Members of the United Nations and member States of the specialized agencies;

(b) Provision for the participation of the intergovernmental organizations as observers;

(c) Provision for the participation of relevant major groups as observers.

3. Secretariat

(a) Authorize the secretariat of the United Nations Forum on Forests to act as the secretariat of the negotiation process or establish a separate ad hoc secretariat;

(b) Guidance on securing adequate human, financial and other resources for the secretariat of the negotiation process;

(c) The secretariat of the negotiation process would prepare draft rules of procedure for adoption at the organizational session of the negotiation process;

(d) The secretariat would provide support to any subsidiary body of the negotiation process.

4. Funding for the negotiation process

(a) Use of existing United Nations budgetary resources, without negatively affecting its programmed activities;

(b) Establish a special trust fund with voluntary contributions specifically for the duration of the negotiations in order to ensure participation by developing countries and countries with economies in transition;

(c) Invite Governments, regional economic integration organizations and other interested organizations to contribute to the special trust fund.

5. Subsidiary bodies and processes

(a) Convene an ad hoc working group of experts or establish a multidisciplinary panel of experts to assist the secretariat in assessing the substantive content of a legal framework on all types of forests;

(b) The group of experts or panel could conduct, inter alia, the following tasks:

(i) Presentation of an analysis of existing instruments and arrangements;

(ii) Development of different possible scenarios of legal framework on all types of forests with legally binding and non-binding instruments;

(iii) Presentation of legal, institutional and financial implications of the legal framework;

(iv) Presentation of the desired targets, goals and means to achieve those goals and targets;

(v) Recognition of clear linkages to other sectors as well as to the broader development goals, including those contained in the Millennium Declaration, and statement on how the legal framework can further enhance its contribution in achieving those goals;

(vi) Suggested modalities of international cooperation, national coordination and other collaborative actions;

(vii) Consideration of the role of stakeholders;

(viii) Provisions on framework for compliance and systematic monitoring, assessment and reporting;

(ix) Relationship with other international instruments, organizations and institutions in order to avoid duplications, contradictions and complications;

(x) Identify global norms and standards, which would also enhance complementarity and clarity in required actions by all parties/stakeholders;

(xi) Recommend the type of legal framework, with justifications;

(xii) Recommend means of implementation, in particular financial mechanisms at national and international levels, giving special attention to the limited capacity of least developed countries;

(c) The group of experts or panel could meet before the first session of the negotiating process and present its report to the process for its consideration. The process may use the report as a basis for negotiation of the legal framework.

6. Reporting of progress in negotiations

An appropriate reporting procedure on the progress of the negotiation process.